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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,407	02/10/2004	Michael D. Armbruster	FSHR-028/02US	9773

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EXAMINER

NGUYEN, KIEN T

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,407

Applicant(s)

ARMBRUSTER ET AL.

Examiner

Kien T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 6 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/23/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 112

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is confusing because the recited lights and sounds do not have any connection to the swing as set forth in claim 7. Therefore, it was not clear how the lights and sounds connected to the swing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Canna et al. U.S. Patent 6,464,594.

Canna et al disclose a swing comprising a support frame (103); a swing arm (104) extending downwardly from, and pivotably coupled to the support frame; a seat (105) coupled to the arm; a flexible fabric shield (300) (see column 3, line 33) coupled to the arm and extending downwardly toward the seat (applicant's claim 1); Fig. 1b shows

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the frame (103) having a U-shaped bracket to allow the frame to move from a collapsed configuration and an expanded configuration, and the seat could also be move with the frame from a collapsed configuration and an expansion configuration, wherein the shield (300) is taut when the seat is in the expanded configuration as shown in Fig. 1a.

Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Berlin U.S. Patent 3,256,016.

Berlin disclosed a swing comprising a support frame (14) reconfigurable between a first use position (Fig. 1) and a second storage position (Fig. 7); a swing arm (16) pivotably coupled to the support frame; a seat (12) coupled to the swing arm and having a foot portion (28) and a back portion (34), the foot and back portions each being pivotably coupled to the swing arm such that the seat is movable between a first use position (Fig. 1) and a second storage position, the foot portion and the back portion being approximately parallel in the storage position (see column 2, lines 58-61); the frame (14) including a first portion (70) and a second portion (66) pivotably coupled to the first portion (70), wherein the first portion is angularly spaced from the second portion (Fig. 1) in the use position and the first portion is adjacent the second portion in the storage position (Fig. 7).

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Ayrolles U.S. Patent 5,564,987.

Ayrolles discloses a swing comprising a first frame portion (3); a second frame portion (4-2) pivotably coupled to the first frame portion being reconfigurable between a first position in which the second frame portion is angularly spaced from the first frame

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portion (Fig. 2) and a second position in which the first frame portion is adjacent the second frame portion (Fig. 5); a cross member (2-2) coupled to at least the first frame portion; first and second swing arms (7), each having a first end and a second end, each of the second end being pivotably coupled to the cross member at (8) and extending downwardly from the first frame portion when in the first position; a seat (6) coupled to the first ends of the swing arms at (10), the seat being reconfigurable between a use position and a storage position (see Figs. 2 and 4).

Claim 10 is rejected under 35 U.S.C. 102(e) as being anticipated by Fair et al. U. S. Patent 6,319,138.

Fair et al disclosed a swing comprising a support frame (16, 18); a swing arm (38) extending downwardly from and pivotably coupled to the support frame; a seat (14) coupled to the arm; a cross member (20) coupled to the frame and defining a recess (see Fig. 2) along its length to configured to be a handle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fair et al in view of Flannery et al U.S. Patent 6,471,597.

It is noted that Fair et al failed to teach the use of a light and a switch as set forth in claim 11. However, Flannery et al disclose a swing having a light (162) and a switch

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(154) configured to actuate the light (see column 3, lines 56-67). Therefore, it would have been obvious to one of ordinary skill in the art to modify the cross member of Fair et al with the light and switch as taught by Flannery et al for the purpose of viewing the function of the motor.

Allowable Subject Matter

Claims 6 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The enclosed references are cited for interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (703) 308-2493. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kien T. Nguyen
Primary Examiner
Art Unit 3712

Ktn